

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN DEAN BREWER,
aka MICHAEL GREEN,

Petitioner,

v.

SUPREME COURT OF CALIFORNIA,

Respondent.

Case No. [22-cv-01777-WHO](#) (PR)

ORDER OF DISMISSAL

Dkt. Nos. 6, 8, 10 and 11

INTRODUCTION

Petitioner Kevin Dean Brewer, aka Michael Green, has filed another petition challenging the same state convictions he challenged in four prior habeas actions he filed in this district: *Green v. Knipp*, No. 12-cv-01689-WHO, *Brewer v. Perez*, No. 15-cv-02456-WHO, *Green v. Covello*, 19-cv-00176-WHO, and *Brewer v. Warden*, No. 20-cv-03975-WHO. The instant petition will be dismissed as second or successive to the prior petitions.

BACKGROUND

The first habeas petition was denied on the merits. (*Green*, No. 12-cv-01689-WHO, Docket No. 43.) Petitioner appealed, but his appeal was terminated by the Ninth Circuit because it was not timely filed. (*Id.*, Dkt. Nos. 45, 47 and 50.)

The second habeas action was dismissed as second or successive. (*Brewer*, No. 15-cv-02456-WHO, Dkt. No. 4.) Petitioner appealed, but the Ninth Circuit terminated his appeal when it denied his request for a certificate of appealability. (*Id.*, Dkt No. 9.)

1 The third habeas action was dismissed as second or successive. (*Green*, No. 19-cv-
2 00176-WHO.) Petitioner appealed, but the Ninth Circuit terminated his appeal when it
3 denied his request for a certificate of appealability. (*Green v. Covello*, Ninth Circuit Case
4 No. 19-15204, Dkt. No. 2.)

5 The fourth habeas was dismissed as second or successive. (*Brewer*, 20-cv-03975-
6 WHO.) Petitioner appealed, but the Ninth Circuit terminated his appeal when it denied his
7 request for a certificate of appealability. (Dkt. No. 10.) The appellate court also denied his
8 motion for reconsideration. (Dkt. No. 13.) The United State Supreme Court denied his
9 petition for writ of certiorari. (Dkt. No. 15.)

10 These prior petitions and the current petition are challenges to petitioner's 2009
11 state court convictions for the sexual abuse and sexual assault of a child, for which he
12 received a sentence of 61 years to life.¹

13 DISCUSSION

14 The instant petition is barred by the rule against filing a second or successive
15 petition. As noted, petitioner has filed at least one previous petition regarding the same
16 convictions at issue in the instant petition. In order to file a second or successive petition,
17 petitioner must obtain an order from the Court of Appeals authorizing the district court to
18 consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Because petitioner has not shown
19 that he has received such authorization, the instant petition must be dismissed as second or
20 successive, the filing of which has not been authorized by the Court of Appeals.
21 Accordingly, the petition is DISMISSED.

22 CONCLUSION

23 The instant petition is DISMISSED as second or successive, the filing of which has
24 not been authorized by the Court of Appeals.

25 Brewer's motion to file an amended petition is GRANTED. (Dkt. No. 6.) The
26 amended petition appears as Dkt. No. 7. His motion for joinder, which is a request to add
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28 ¹ *People v. Brewer*, 192 Cal. App. 4th 457 (Cal. Ct. App. Feb. 1, 2011).

claims without filing an amended petition, is DENIED. (Dkt. No. 11.) His motion to proceed *in forma pauperis* is GRANTED. (Dkt. Nos. 8 and 10.)

A certificate of appealability will not issue. Petitioner has not shown “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Clerk shall terminate all pending motions, enter judgment in favor of respondent, and close the file.

IT IS SO ORDERED.

Dated: April 22, 2022


WILLIAM H. ORRICK
United States District Judge

United States District Court
Northern District of California